

Law Offices

LEE J. GARY
722 First National Bank Bldg.
Chicago 3, Ill.

US EPA RECORDS CENTER REGION 5



470326

March 9, 1948.

Frost Company,
Kenosha,
Wisconsin.

Attention: Mr. Frost.

re: Schaible Patent 2,278,566

Dear Sir:

We have studied the Schaible patent relative to your No.20 crum-
cup sink strainer illustrated in your drawing No.20-1A.

There are eleven claims in the Schaible patent and of the eleven
claims we believe that claims 2, 3, 4, 6, 7 and 8 may present a
question of infringement. The remaining claims contain limitations
which, in our opinion, clearly eliminate a question of infringement
with regard to these claims.

In the Schaible construction, one of the features of the Schaible
invention resides in the fact that Schaible employs a material for
his inner cup which has high tensile strength and is characterized
by its erosion and corrosion properties such as stainless steel,
Monel metal, or the like. Schaible states in his specification
that the material comprising the inner cup is relatively thin and
cannot be threaded. Claims 1, 5, 9, 10 and 11 contain the express
limitation that the inner cup is constructed of a relatively thin
material, some of said claims characterize the thin material as
being incapable of carrying threads but at all events, in our opinion,
the recitation of a thin material for the inner cup implies the ab-
sence of threads.

The remaining claims, that is, those which we believe may present a
question of infringement, do not characterize the inner cup as being
of relatively thin material. However, said claims mention that the
inner cup or inner shell as Schaible calls it is connected to his
pipe coupler. In the three forms of the invention illustrated by
Schaible the inner shell and the coupler are shown as comprising
separate elements which are press-fitted together. The reason that
Schaible employs this construction is to take advantage of the rel-
atively thin material comprising the inner shell.

In your construction the inner shell and the pipe coupler are formed
integral. Broadly those Schaible claims which call for the inner
shell being connected to and carried by the pipe coupler would cover
a construction such as yours wherein the connection between the inner
shell and the pipe coupler is an integral connection. Accordingly,
if the Schaible claims in question were given a broad interpretation
we believe that there would be a very serious question of infringe-
ment.

In reviewing the abandoned file history of the design application
filed in the name of Mr. Walter J. Frost, Serial No. D89,629, we ran
across a patent to Pasman, patent No.2,038,852, issued April 28,1936,

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and filed June 27, 1935. In the Pasman construction Pasman shows an inner shell which is formed integral with his pipe coupler. The pipe coupler is threaded and an outer shell threadedly engages the threads of the pipe coupler, the strainer being secured to the sink between opposing flanges carried by the inner and outer shells respectively. It appears that claims 2, 3, 4, 6, 7 and 8 which present a prima facie question of infringement with regard to your device, read with equal accuracy upon the Pasman device. In view of the fact that the Pasman device issued in April of 1936 it is prior art against the Schaible patent and consequently it would appear that if the claims in question in the Schaible patent are given a sufficiently broad interpretation to cover your construction they will read upon the Pasman patent. Consequently, we are of the tentative opinion that if the claims in question in the Schaible patent are to be considered valid, the limitation in said claims which calls for the connection of the inner shell and pipe coupler must contemplate a connection other than an integral connection since Pasman shows an integral connection between the pipe coupler and inner shell, Pasman also showing structure which finds response in the Schaible claims.

In reviewing our past correspondence we note that at one time we called Mr. Frost's attention to claim 1 of the Pasman patent. In this connection your attention is directed to our letters of October 27, 1939, and November 13, 1939.

It seems that claim 1 of the Pasman patent presented a prima facie question of infringement. However, at that time we examined the patent to Brotz, No. 1,704,529, which, in our opinion, so limited claim 1 of the Pasman patent as to resolve the question of infringement. Strangely enough, although the Brotz patent relieved you of the question of infringement of the Pasman claim 1, we found at that time that you infringed claims 1 and 5 of the Brotz patent. It is our understanding that the Brotz patent is the one under which you took a license. The Brotz patent has since expired.

You will note that we stated that we were tentatively of the opinion that the claims in question of the Schaible patent could not be given a sufficiently broad interpretation as to cover your construction in view of the Pasman patent. In order to give you a final opinion on this matter we request that you authorize us to order the file history of Schaible to ascertain whether or not the Pasman patent was cited against Schaible during the prosecution of his application and if so what arguments were used in order to avoid the Pasman patent. We shall await your instructions before ordering the Schaible file history.

For your examination we are herewith enclosing a copy of the Pasman patent. After you have inspected this patent will you kindly return it to us since it is our only copy. Also, will you send us your copy of the Brotz patent. We note that in our letter of November 13, 1939, we sent you a copy of this patent.

Very truly yours,
W.F.Desmond.

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P.S. We are also enclosing your copy of the Schaible patent so that you may compare claims 2,3,4,6, 7 and 8 with the Pasman structure. Will you kindly return this patent when you have finished with it.

W.F.D.